

## **AMENDED AND RESTATED CONFIRMATION AGREEMENT (TOLLING)**

This AMENDED AND RESTATED CONFIRMATION AGREEMENT (the “Agreement”) is made and entered into as of the hour ending 24:00 on December 31, 2002, by and between the **Department of Water Resources**, an agency of the State of California, with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (the “Department”), and **Sunrise Power Company, LLC**, a Delaware limited liability company (the “Seller”).

### **WITNESSETH:**

WHEREAS, Seller owns the Sunrise Power Project, a natural gas-fired power plant which is currently planned to be constructed in Kern County, California (the “Facility”) in two phases: (1) the first phase (“Phase 1”) comprising the time period set forth in Section 2.01 during which the Facility consists of two General Electric 7FA gas turbines, providing approximately 325 megawatts of peaking capacity and (2) the second phase (“Phase 2”) comprising the time period set forth in Section 2.01 following the addition of a steam turbine generator, two heat recovery steam generators and other ancillary equipment to the Facility for the conversion of the power plant to an approximately 560 megawatt combined cycle facility, with supplemental duct firing.

WHEREAS, Seller and the Department entered into a Confirmation Agreement dated as of June 25, 2001, and are now desirous of amending said Confirmation Agreement as set forth herein;

WHEREAS, the Department and Seller are concurrently herewith entering into an Amended and Restated Master Power Purchase and Sale Agreement setting forth general terms and conditions for the purchase and sale of Contract Capacity and associated Energy from the Facility (the “Master Agreement”).

WHEREAS, the Department and Seller desire to enter into this Agreement to confirm the specific terms of the purchase and sale of Contract Capacity and associated Net Electrical Output from the Facility as governed generally by the Master Agreement, and to amend and restate in its entirety that certain Confirmation Agreement (Tolling), dated June 25, 2001, by and between Seller and the Department (the “Original Confirmation Agreement”).

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01 Definitions. The following terms shall have the respective meanings in this Agreement:

“Accepted Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“Actual Capital Costs” means the sum of all Capital Costs actually incurred by or on behalf of Seller to complete construction of the Facility in its Phase 1 and Phase 2 configurations.

“Actual Heat Rate” means the quotient, expressed in Btu/kWh, of (i) the HHV of the Fuel consumed by the Facility in a specified time period, divided by (ii) the amount of Net Electrical Output produced by the Facility during that same time period.

“Annual Availability” shall have the meaning set forth in Section 8.05 hereof.

“Annual Dispatch Schedule” shall have the meaning set forth in Section 6.06(b) hereof.

“Annual Imbalance” means, for any Annual Period, the total amount of Imbalances aggregated over all hours of such Annual Period.

“Annual Period” means the period which includes all the hours of any calendar year during the Term (or, if only a portion of a calendar year falls within the Term, then the period which includes all the hours of such portion of the calendar year which falls within the Term).

“Availability Notice” shall have the meaning set forth in Section 4.02 hereof.

“Btu” means British thermal unit.

“Business Day” means any Day other than a Saturday, Sunday or a holiday in the United States observed by Federal Reserve member banks in New York City.

“CEC” means the California Energy Commission.

“CAISO” means the California Independent System Operator, or its successor.

“California Law” means the laws, regulations and rules of the State of California and/or its agencies, including, without limitation, tax laws that discriminate between electricity generators and other manufacturing taxpayers generally.

“Capacity Payment” shall have the meaning set forth in Section 7.01 hereof.

“Capital Costs” means the “hard costs” incurred by or on behalf of Seller to complete the construction and start-up of the Facility, generally summarized in the cost categories set forth on Schedule B attached hereto.

“Contract Availability” means (i) ninety-five percent (95%) for any Summer Period, and (ii) ninety-one and eight-tenths percent (91.8%) for any Annual Period; provided however, the value set forth in (ii) shall be reduced by three and six-tenths percent (3.6%) for any Annual Period in which a Unit hot gas path inspection occurs and by seven and four-tenths percent (7.4%) for any Annual Period in which a Unit major overhaul occurs.

“Contract Capacity” shall have the meaning set forth in Section 3.03 hereof.

“Contract Heat Rate” shall have the meaning set forth in Section 11.01 hereof.

“Conversion Period” shall have the meaning set forth in Section 2.01 hereof.

“Correction Curves” means the performance curves utilized by the Facility’s construction contractor to adjust the results of the Facility’s performance tests performed at Facility completion to Standard Site Conditions, which performance curves shall be provided to the Department as soon as they are received, but in no case later than 15 days after Phase 2 COD; the Department shall grant its approval of such performance curves, unless good cause for rejection exists.

“CPUC” means the California Public Utilities Commission.

“Day” means a period of twenty-four (24) consecutive hours (as shortened or lengthened for Daylight Savings Time), beginning with the hours ending 01:00 prevailing local time for the Facility.

“Delivery Point” means the 230 kV bus at Pacific Gas & Electric’s Midway Substation, at Buttonwillow, California.

“Dispatch” means to request or a request for Net Electrical Output from the Facility or any Unit.

“Dispatch Notice” shall have the meaning set forth in Section 5.01 hereof.

“Energy” means electrical energy expressed in MWh of the character commonly known as three (3) phase, sixty (60) hertz electric energy delivered at an acceptable voltage consistent with Accepted Electrical Practices and the requirements of the CAISO.

“Estimated Capital Costs” means the estimated Capital Costs for the Facility, projected by Seller as of the date of the Original Confirmation Agreement and as set forth on Schedule B attached hereto.

“Estimated Monthly Availability Schedule” shall have the meaning set forth in Section 4.01 hereof.

“Event of Default” shall have the meaning ascribed to such term in the Master Agreement.

“Excess Imbalance Charge” shall have the meaning set forth in Section 5.05 hereof.

“Excused Hour” means an hour during which the Facility would otherwise be available for Dispatch of a substantial portion of the Contract Capacity, but is incapable of producing and/or delivering Energy due to any of the following circumstances: (i) electric transmission at or immediately downstream of the Delivery Point is physically unavailable and such unavailability is not due to any action or failure to take action of the Seller, (ii) gas pipeline facilities required to deliver gas to the Facility are physically unavailable and such unavailability is not due to any action or failure to take action of the Seller, or (iii) Seller is performing a water wash of the Units in preparation for a replacement capacity test scheduled pursuant to Section 3.02(e) below, except that no more than 28 hours may be Excused Hours in connection with any replacement capacity test.

“Facility” shall have the meaning set forth in the recitals hereof.

“Force Majeure” shall have the meaning ascribed to such term in the Master Agreement.

“Fuel” means natural gas that meets or exceeds the specifications set forth in the applicable transporter’s tariff.

“Fuel Costs” means any and all costs, expenses and charges incurred by Seller for the management, procurement, transportation, storage and delivery of Fuel used by the Facility in the production of Energy to be sold to the Department under this Agreement, including, without limitation, fuel commodity, firm contract reservation fees (regardless of whether Fuel is purchased, transported and/or stored during any month that such fees apply), transportation, storage, balancing and resale costs, expenses, fees, penalties and charges, and all taxes relating to the same.

“Fuel Payment” shall have the meaning set forth in Section 7.03 hereof.

“Fuel Plan” means a plan prepared and proposed by Seller for the supply of Fuel to the Facility based upon an Annual Dispatch Schedule, which plan shall take into consideration any existing multi-year Fuel supply and transmission contracts previously entered into for the Facility and shall propose a mix of long-term, short-term and spot market Fuel purchases.

“Fuel Manager” means an affiliate of Seller or the person or company contracted by Seller to provide fuel management services for the Facility.

“Fuel Supply Contracts” shall have the meaning set forth in Section 6.05 hereof.

“Full Load” means the operating state of the Facility during which all of the Units are operated at their “base load” Net Electrical Output under prevailing conditions, without duct firing, and in such a way as to be sustainable for long periods of time without adversely affecting the normal maintenance requirements of the Facility.

“Heat Rate Ratio” shall have the meaning set forth in Section 11.03 hereof.

“HHV” means the higher heating value energy content of the Fuel as determined by the fuel transporter delivering such Fuel to the Facility.

“Imbalance” means, for any hour, the total amount expressed as MWh’s equal to (a) the amount by which (i) the actual Net Electrical Output delivered during such hour is less than (ii) the amount of Energy properly scheduled by the Department pursuant to Section 5.01 hereof for such hour, less (b) the amount of any such differences caused by (i) variations in CAISO generator meter multipliers, (ii) outages on the gas and electric transmission system serving the Facility, (iii) variations caused by differences between actual and predicted temperature and barometric pressure at the Facility, and (iv) if the Department is the Facility’s Scheduling Coordinator, the action or inaction of the Scheduling Coordinator (including, without limitation, mistakes, delays in making schedule changes following notification by Seller, or from differences between the amount dispatched at the Delivery Point and that scheduled with CAISO).

“Imbalance Tolerance” means, for any Annual Period, two percent (2%) of the total amount, in MWh, of Net Electrical Output properly scheduled by the Department during such Annual Period pursuant to this Agreement.

“Incremental Fuel Costs” means any and all costs, expenses and charges incurred by Seller for the management, procurement, transportation, storage and delivery of Fuel used by the Facility in the production of Undispatched Energy, to the extent that such costs, expenses and charges are incrementally in excess of the Fuel Costs that would have been incurred in the absence of producing such Undispatched Energy.

“Invoice Month” means the calendar month after the delivery of Contract Capacity and/or Net Electrical Output for which an invoice is being issued.

“kWh” means kilowatt-hour.

“Master Agreement” shall have the meaning set forth in the recitals hereof.

“Market Price” means the lowest price of the good faith price quotations that satisfies Seller’s requirements for the relevant time period solicited from not less than three (3) marketers, traders, or sellers of Fuel.

“Maximum Load” means the operating state of the Facility during which all of the Units are operated at Full Load and the Facility’s duct burners are turned on to maximize Net Electrical Output within the Permit Limits and prevailing conditions.

“Metering Point” means the point at or near where the bus at the 230 kV side of the Facility’s generation step-up transformer(s) connects with the transmission line leaving the Facility.

“Metering System” means all meters, metering devices and related instruments used to measure and record the delivery and receipt of Net Electrical Output and Contract Capacity at the Delivery Point.

“Minimum Load” means the operating state of the Facility during which only one of the Units is operating and is operated at the minimum load consistent with Accepted Electrical Practices, which is presently estimated to be sixty percent (60%) of Full Load and the Facility’s duct burners are turned off to minimize Net Electrical Output within the Permit Limits and prevailing conditions.

“MMBtu” means one million Btu’s.

“Monthly Dispatch Schedule” shall have the meaning set forth in Section 5.02 hereof.

“MWh” means megawatt-hour.

“Net Electrical Output” means the net Energy delivered by Seller to the Department at the Delivery Point pursuant to this Agreement, after reduction for transmission losses up to the Delivery Point, but prior to any generator meter multiplier reduction applied by the CAISO.

“Nomination Deadline” means the daily deadline by which Kern River Gas Transmission requires day-ahead gas delivery schedules to be submitted, currently 11:30 a.m. prevailing Central Time each Day for gas flow beginning at 9:00 a.m. prevailing Central Time the succeeding Day.

“Outage Schedule” shall have the meaning set forth in Section 4.03 hereof.

“Part Load” means the operating state of the Facility during which all of the Units are operated at the minimum load consistent with Accepted Electrical Practices, which is presently expected to be sixty percent (60%) of Full Load and the Facility’s duct burners are turned off.

“Permit Limits” means the limitations on the operation of the Facility set forth on Schedule A hereto.

“Person” means any individual, corporation, limited liability company, partnership, limited partnership, joint venture, trust, unincorporated organization, association, governmental authority, or other entity.

“Phase 1” shall have the meaning set forth in the recitals hereof.

“Phase 1A COD” shall have the meaning set forth in Section 2.03 hereof.

“Phase 1B COD” shall have the meaning set forth in Section 2.03 hereof.

“Phase 1 Term” shall have the meaning set forth in Section 2.01 hereof.

“Phase 2” shall have the meaning set forth in the recitals hereof.

“Phase 2 COD” shall have the meaning set forth in Section 2.04 hereof.

“Phase 2 Capacity Payment” shall have the meaning set forth in Section 7.01(b) hereof.

“Phase 2 Term” shall have the meaning set forth in Section 2.01 hereof.

“Scheduled Outages” means a period during which either or both Units are not available for operation due to planned maintenance that has been scheduled in advance in accordance with Section 4.03 hereof.

“Scheduling Coordinator” means the entity which is responsible for performing the responsibilities defined for such a party in the CAISO tariff, including but not limited to scheduling the Net Electrical Output from the Facility with the CAISO.

“Standard Site Conditions” means the following conditions:

Ambient Temperature	59F
Relative Humidity	60%
Barometric Pressure	13.98 psia
Generator Power Factor	0.90

“Start-Up” means the action of bringing a Unit from non-operation to the output level required pursuant to the applicable Dispatch Notice from the Department.

“Start-Up Notification Lead Time” means the time period required by Seller to complete Start-Up of a Unit or Units, not to exceed 1 hour during Phase 1 and 4 hours during Phase 2, measured from the time of commencement of such Start-Up until the Facility is operating at the level of output required by the applicable Dispatch Notice.

“Start-up Payment” shall have the meaning set forth in Section 7.04 hereof.

“Summer Availability” shall have the meaning set forth in Section 8.05 hereof.

“Summer Period” means, in any year during the Term, the period which includes all hours of June, July, August and September of any year during the Term (or if only a portion of such months falls within the Term, then the period which includes all the hours of such months which falls within the Term).

“Test Energy” means any Net Electrical Output that is produced by the Facility in connection with heat rate testing and other testing of the Facility or any Unit prior to the Phase 1A COD or during the Conversion Period, and any Net Electrical Output produced by the second Unit after Phase 1A COD but prior to Phase 1B COD.

“Term” shall have the meaning set forth in Section 2.01.

“Undispatched Energy” shall have the meaning set forth in Section 5.06.

“Unit” means any one of the two combustion turbine generating units of the Facility.

“Unscheduled Outage” means a period during which either or both Units are not available for operation due to the need to maintain or repair a component of the Facility that has not been scheduled in advance.

“Utility Rate” means, at any time, the then-effective rate schedule issued by Pacific Gas & Electric Company under which Seller purchases standby, start-up, and auxiliary electric demand and energy service for the Facility.

“VO&M Payment” shall have the meaning set forth in Section 7.02 hereof.

“Weather Forecast” means the ambient temperature, humidity, and barometric pressure forecasted, at the time an Availability Notice is prepared, to prevail at the times covered by the relevant Availability Notice. The hourly ambient temperatures applied in any Availability Notice will be based on the daily high and low temperature forecasts from at least three commercial weather data sources (to be identified to Department upon request), averaged together. The hourly humidity forecast applied in any Availability Notice will be based on historical seasonal averages, unless conditions are forecasted to diverge significantly from such seasonal averages. The barometric pressure applied in any Availability Notice will be 28.8 in. Hg.

“Weekly Dispatch Schedule” shall have the meaning set forth in Section 5.02 hereof.

Section 1.02 Interpretation. Unless the context otherwise requires:

(a) Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

(b) Any reference in this Agreement to any Person includes its successors and assigns and, in the case of any government agency, any Person succeeding to its functions and capacities.

(c) Any reference in this Agreement to any Section or Schedule means and refers to the Section contained in, or Schedule attached to, this Agreement.

(d) Other grammatical forms of defined words or phrases have corresponding meanings.

(e) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(f) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.



(g) A reference to a party to this Agreement includes that party's successors and permitted assigns.

(h) A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time.

(i) If any payment, act, matter or event hereunder would occur on a Day that is not a Business Day, then such payment, act, matter or event shall, unless otherwise expressly provided for herein, occur on the last prior Business Day.

(j) Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

(k) References to articles, sections, subsections and attachments shall be to such portions of this Agreement. The words "herein", "hereof", "hereto", "hereunder" and words of similar import shall refer to this Agreement.

(l) Other capitalized terms used but not defined herein shall have the same meaning as given in the Master Agreement.

## **ARTICLE II TERM/COMMERCIAL OPERATION OF THE FACILITY**

Section 2.01 Term. Unless earlier terminated as provided herein, the term of this Agreement shall consist of (a) a term commencing on the date of this Agreement and terminating at 2400 hours on February 28, 2003 ("Phase 1 Term"), and (b) a term commencing at the conclusion of the Phase 1 Term and terminating at 2400 hours on June 30, 2012 ("Phase 2 Term"). The Phase 1 Term and the Phase 2 Term are collectively referred to herein as the "Term". The Facility will be undergoing construction between the conclusion of the Phase 1 Term and the Phase 2 COD, during which time it will be inoperable (except for Test Energy in connection with the construction) and not available for Dispatch by the Department (the "Conversion Period"). The parties hereto agree that, for the purposes of calculating any amounts owing from Seller to the Department, or the Department to Seller, or of determining any obligations of the parties relating to the Facility during any time prior to January 1, 2003, the terms of the Master Power Purchase and Sale Agreement between the parties dated as of June 25, 2001 (the "Original Master Agreement"), and the Original Confirmation Agreement shall control.

Section 2.02 Phase 1 Actual Commercial Operations. Actual commercial operations for the first Unit ("Phase 1A COD") and the second Unit during Phase 1 ("Phase 1B COD") will occur when Seller has determined that all of the following requirements have been met: (a) all Facility systems necessary for the continuous operation of each Unit are complete, (b) tests of all equipment and systems necessary to demonstrate the reliable operation of each Unit at a capacity of at least 150 MW, adjusted to Standard Site Conditions, have been successfully completed, (c) the electrical interconnection agreement is in place and the electrical interconnection facilities

have demonstrated the ability to accept the full-load output of each Unit of the Facility for Phase 1, and (d) the gas interconnection agreement and the gas interconnection facilities are in place. Seller will use commercially reasonable efforts to achieve Phase 1A COD by 0000 hours on July 16, 2001 and Phase 1B COD by 0000 hours on July 30, 2001. The parties acknowledge and agree that the effectiveness of this Agreement is conditioned upon Seller's successful completion of permitting, development and construction of Phase 1 of the Facility, and neither party shall have any liability to the other under this Agreement in the absence of such successful completion.

**Section 2.03 Phase 2 Actual Commercial Operations.** Actual commercial operations for Phase 2 of the Facility ("Phase 2 COD") will occur when Seller has determined that all of the following requirements have been met: (a) all Facility systems necessary for the continuous operation of the Units together with the additional equipment required for combined cycle operation are complete, (b) tests of all equipment and systems necessary to demonstrate the reliable operation of the Facility in combined-cycle mode at a capacity of at least 515 MW, adjusted to Standard Site Conditions, have been successfully completed, (c) the electrical interconnection agreement is in place and the electrical interconnection facilities have demonstrated the ability to accept the full-load output of the Facility for Phase 2, (d) the gas interconnection agreement and the gas interconnection facilities are in place, and (e) Seller shall have received all necessary permitting and regulatory approvals of the combined-cycle configuration, including, without limitation, certification from the CEC. Seller will use its reasonable efforts to achieve Phase 2 COD by 0000 hours on August 1, 2003. The Parties acknowledge and agree that the effectiveness of this Agreement beyond Phase 1 is conditioned upon Seller's successful completion of permitting, development and construction of Phase 2 of the Facility, and neither party shall have any liability to the other under this Agreement beyond Phase 1 in the absence of such successful completion.

**Section 2.04 Penalty for Delayed Phase 1.** In the event that Phase 1A COD or Phase 1B COD does not occur on or prior to August 15, 2001 for any reason other than Force Majeure, Seller shall incur a penalty of \$1M. In the event that both Phase 1A COD and Phase 1B COD do not occur on or prior to August 15, 2001 for any reason other than Force Majeure, Seller shall incur a penalty of \$2M. Such penalty shall be payable as a credit against the first \$1M or \$2M, as applicable, of Capacity Payments invoiced by Seller to the Department.

**Section 2.05 Progress Reports.** Within thirty (30) Days following the end of each calendar quarter ending prior to Phase 2 COD, Seller shall provide the Department with a brief report describing the status of Facility construction and any material changes in Estimated Capital Costs.

### **ARTICLE III PURCHASE AND SALE OF CONTRACT CAPACITY AND NET ELECTRICAL OUTPUT**

**Section 3.01 Purchase and Sale of Contract Capacity and Net Electrical Output.** Seller shall sell and deliver to the Department at the Delivery Point, and the Department shall purchase, receive at the Delivery Point, and pay for, the Contract Capacity and the Net Electrical Output. Other than CAISO charges, Seller shall be responsible for any non-Fuel production costs or

charges imposed on or associated with the Contract Capacity and associated Energy up to the Delivery Point and any non-Fuel transmission costs from the Facility to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Contract Capacity and Net Electrical Output or its receipt at and from the Delivery Point, any transmission losses from the Delivery Point and any losses associated with the generator meter multiplier or other charges assessed by the CAISO on the Net Electrical Output. Seller shall operate and maintain the Facility in accordance with Accepted Electrical Practices.

### Section 3.02 Capacity Testing.

(a) Seller shall provide the Department at least seven (7) Days' notice if Seller intends to conduct a capacity test. Any capacity test may be conducted during the course of regular operations or during a test conducted for the purpose. The Department shall have the right to have one or more representatives observe such capacity tests. In the event that Seller elects to perform a capacity test during a period that the Department has not otherwise elected to Dispatch the Facility, the Department shall issue a Dispatch Notice for purposes of the capacity test that calls for at least six consecutive Full Load operating hours and shall schedule operation of the Facility with the CAISO. The Department will pay Seller for Net Electrical Output delivered during any capacity test as provided in Article X.

(b) Capacity tests may begin only after the Facility has been successfully started and has been in stable steady-state operation for at least one (1) hour prior to the test period. During the capacity test, Seller shall operate the Facility in a manner that it is willing to operate on a sustained basis under prevailing conditions.

(c) Within ten (10) Days following any capacity test, Seller shall provide the Department with the results of such capacity test, including Metering System readings and copies of Facility log sheets verifying the operating conditions and Net Electrical Output of the Facility during the test, and a curve of the Net Electrical Output versus ambient temperature.

(d) In the event that the Contract Capacity determined by any capacity test is reasonably unsatisfactory to Seller, Seller may schedule up to two (2) additional replacement capacity tests within any calendar year.

(e) In the event that the Contract Capacity determined by any capacity test is reasonably unsatisfactory to the Department, the Department may schedule up to two (2) replacement capacity tests within any calendar year.

In the event of any replacement capacity test conducted pursuant to Section 3.02(d) or 3.02(e) above, Seller shall have the opportunity prior to any such replacement capacity test to perform a water wash of the Units.

Section 3.03 Contract Capacity. The contracted generating capacity of the Facility shall be equal to the Net Electrical Output averaged over four (4) consecutive hours selected by Seller, corrected to Standard Site Conditions using a curve of the Net Electrical Output versus ambient temperature ("Contract Capacity"), as determined by capacity testing at Full Load pursuant to Section 3.02 at the following times for Phase 1: (a) within thirty (30) Days following Phase 1A COD, (b) within thirty (30) Days following Phase 1B COD, and (c) annually thereafter

at a time chosen by Seller during the weekday on-peak periods of the months of April or May preceding each Summer Period. The Contract Capacity during the Conversion Period shall be the Contract Capacity last demonstrated prior to the beginning of the Conversion Period. The Contract Capacity of the Facility during Phase 2 shall be determined by capacity testing at Maximum Load pursuant to Section 3.02 at the following times: (x) within thirty (30) Days following Phase 2 COD, and (y) annually thereafter at a time chosen by Seller during the weekday on-peak periods of the months of April or May preceding each Summer Period. The Contract Capacity demonstrated during subsequent capacity tests shall be applied for payment purposes beginning on the first Day of the first month following delivery of the test results to the Department.

Section 3.04 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to deliver the Contract Capacity and the Net Electrical Output to the Delivery Point. The Department shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with the CAISO or other transmission providers as necessary to receive the Contract Capacity and the Net Electrical Output at the Delivery Point. The Department shall be the Scheduling Coordinator for the Facility and shall be responsible for any costs or charges assessed by the CAISO in the Department's role as Scheduling Coordinator for the Facility and for any operations related charges applied by the CAISO under a participating generator agreement between Seller and the CAISO. In its role as the Scheduling Coordinator, the Department shall also be responsible for reconciling and settling the charges and/or credits associated with the Net Electrical Output with the CAISO. Seller shall provide the Department with such data as is necessary for the Department to carry out its responsibilities as Scheduling Coordinator. The Department may, at a cost to the Department to be mutually agreed between the Department and Seller, delegate to Seller its responsibilities as the Facility's Scheduling Coordinator. If the Department elects to delegate its responsibilities as the Facility's Scheduling Coordinator to Seller, Seller shall have the right to amend its scheduled deliveries of Net Electrical Output and the Department's corresponding receipts of same beginning with the clock hour that begins two hours following notice that an event has occurred that reduces the Facility's ability to generate Net Electrical Output, and Seller shall also have the right to approve the generator meter multiplier that is used in the Dispatch Notice to determine the scheduled deliveries to CAISO relative to the Net Electrical Output available at the Delivery Point.

## **ARTICLE IV AVAILABILITY; SCHEDULED OUTAGES**

Section 4.01 Availability Schedule. Not later than ten (10) Business Days prior to the beginning of each month during the Term following Phase 1A COD, Seller shall provide a non-binding hourly schedule of the estimated amounts of Net Electrical Energy that the Facility will be available to produce for the upcoming month (each an "Estimated Monthly Availability Schedule"), along with a non-binding estimate of the Fuel Payment plus VO&M Payment per MWh (at Minimum Load, Part Load, Full Load, and incrementally to Maximum Load) and Start-Up Payment per start for such month. The estimated amounts of Net Electrical Energy that the Facility will be available to produce contained in any Estimated Monthly Availability Schedules and Availability Notices shall be based upon typical ambient temperatures.

Section 4.02 Availability Notice. Not later than two (2) Days before each Day during the Term following Phase 1A COD, Seller shall provide the Department a schedule of the amounts of Net Electrical Energy that the Facility is expected to be available to produce each hour of such Day (each an “Availability Notice”) based upon the applicable Weather Forecast and mechanical conditions at the Facility. Availability Notices for Sundays and Mondays shall be provided on the preceding Fridays. Seller shall accommodate the Department’s reasonable requests for changes in the time of delivery of Availability Notices.

Section 4.03 Scheduled Outages. Not later than forty-five (45) Days prior to the commencement of any calendar year during the Term, Seller shall submit to the Department its schedule of Scheduled Outages for the upcoming year (“Outage Schedule”). Within ten (10) Days after its receipt of the Outage Schedule, the Department shall notify Seller in writing of any reasonable request for changes to the Outage Schedule. If the Department fails to provide such notice within the prescribed period, the Department shall be deemed to have approved the Outage Schedule. If the Department requests changes to the Outage Schedule, it shall suggest alternative dates in writing to Seller. If Seller can accommodate such alternate dates within Accepted Electrical Practices and any obligations it may have to coordinate Outage Schedules with CAISO, such alternate dates shall be accepted, provided that any costs and expenses in connection with such requested alternative date shall be borne solely by the Department. Seller may make reasonable requests to change the approved Outage Schedule. If the Department can accommodate such alternate dates, or if the alternate dates are imposed on Seller by CAISO under any rights CAISO may have, such dates shall be accepted. No Scheduled Outages shall be scheduled during the Summer Period. Seller shall notify the Department of Unscheduled Outages as soon as practicable after the condition becomes known to Seller.

Section 4.04 Notice Suspension. The obligation to provide Estimated Monthly Availability Schedules and Availability Notices shall be suspended during the Conversion Period.

## **ARTICLE V DISPATCH; START-UPS**

Section 5.01 Dispatch. The Department shall have the right to Dispatch the Facility at any level of output between Minimum Load and Full Load during the Phase 1 Term, and between Minimum Load and Maximum Load during the Phase 2 Term, by providing to Seller a dispatch notice (“Dispatch Notice”) in the form of Exhibit A attached hereto setting forth the Department’s desired hourly operating levels for the relevant Day, provided that:

- (a) each such Dispatch Notice shall be given to Seller not less than one hour prior to the Nomination Deadline for the relevant Day;
- (b) during the Phase 1 Term, any Dispatch shall be for a run time of no less than two (2) consecutive hours per Unit and during the Phase 2 Term, any Dispatch shall be for a run time of no less than six (6) consecutive hours per Unit;
- (c) any Dispatch that requires a Start-Up of a Unit or Units shall be provided with advance notice of not less than the Start-Up Notification Lead Time for such Unit or Units

and shall reflect the typical ramp-up of Net Electrical Output during a Start-Up of such Unit or Units;

(d) any Dispatch shall be subject to the Permit Limits;

(e) any Dispatch shall be within the limits of Net Electrical Output set forth in the applicable Availability Notice from Seller and subject to any lower limits that may result from mechanical or climatic conditions at the Facility arising subsequent to such Availability Notice; and

(f) the rate of change in scheduled hourly levels of Net Electrical Output shall not exceed the ramp rate of the Facility operating in accordance with Accepted Electrical Practices.

In the event that the Department provides a Dispatch Notice that does not comply with the foregoing limitations, Seller shall notify the Department as soon as Seller becomes aware of such non-compliance. If the Department provides a compliant replacement Dispatch Notice prior to the Nomination Deadline for the relevant Day, Seller shall operate the Facility in accordance with such replacement Dispatch Notice. If a compliant Dispatch Notice is not received by the Nomination Deadline, Seller shall operate the Facility in the state called for in the last hour of the last compliant Dispatch Notice until it receives a revision pursuant to Section 5.04. Seller shall, by facsimile or e-mail, confirm to the Department its receipt of each Dispatch Notice.

#### Section 5.02 Estimated Dispatch Schedules.

(a) Not later than seven (7) Business Days prior to the beginning of each month during the Term following Phase 1A COD, the Department shall provide Seller a non-binding hourly schedule of its expected Dispatch (as Maximum Load, Full Load, Part Load, Minimum Load, or zero) of the Facility for the upcoming month (each a “Monthly Dispatch Schedule”).

(b) Not later than noon each Friday during the Term following Phase 1A COD, the Department shall provide Seller a non-binding hourly schedule of its expected Dispatch (as Maximum Load, Full Load, Part Load, Minimum Load, or zero) of the Facility for the week beginning on the upcoming Monday (each a “Weekly Dispatch Schedule”).

Section 5.03 Notice Suspension. The obligation to provide Monthly Dispatch Schedules, Weekly Dispatch Schedules, and Dispatch Notices shall be suspended during the Conversion Period.

Section 5.04 Intra-Day Dispatch. In addition to the Department’s rights to Dispatch the Facility pursuant to Section 5.01, the Department may make revisions in the schedule contained in any Dispatch Notice after the Nomination Deadline for the relevant Day, subject to the other limitations set forth in Section 5.01, and further subject to Seller’s ability to obtain any additional Fuel required to comply with such revision, by providing notice to Seller at least three (3) hours prior to the hour affected by the revision. All costs incurred by or on behalf of Seller in

connection with the Department's revisions to any schedule set forth in a Dispatch Notice shall be borne solely by the Department and shall be included in the Fuel Costs.

**Section 5.05 Imbalance Costs.** The Department recognizes that its purchases of Net Electrical Output are on a unit-contingent basis, and the actual amounts of Net Electrical Energy delivered in any hour depend on mechanical and climatic conditions prevailing at the Facility at the time of production, among other factors (including, but not limited to, an inability to deliver Fuel to the Facility). Seller recognizes that CAISO may assess imbalance costs when the Net Electrical Output deviates from the amounts of available Energy Dispatched by the Department and pre-scheduled with CAISO. Seller agrees, within Accepted Electrical Practices, to cooperate with the Department to minimize such imbalance costs. The Department shall bear any imbalance costs assessed by the CAISO; provided, however, for the quarter beginning October 1, 2003, and for any Annual Period thereafter, Seller shall pay the Department an amount equal to ten dollars (\$10) per MWh multiplied by the positive difference, if any, between (i) the Annual Imbalance, minus (ii) the Imbalance Tolerance, each calculated with respect to such Annual Period (such amount, the "Excess Imbalance Charge"). Seller shall pay the Excess Imbalance Charge, and shall provide the Department with calculations showing how the amount of such Excess Imbalance Charge was calculated, within 60 days following the end of the applicable Annual Period, or, if the data necessary to calculate such Excess Imbalance Charge is not available through no fault of Seller, within 30 days of receipt of such statement(s) required by Seller to make such calculation. In case of any dispute between Seller and Department regarding any Excess Imbalance Charge, Seller shall pay Department the undisputed portion thereof and the parties shall act in good faith to resolve such dispute within a reasonable period of time.

**Section 5.06 Dispatch by CAISO.** The Department recognizes that, pursuant to an order of the FERC (in Docket EL00-95-012 or otherwise), Seller may be required to offer for sale to CAISO in CAISO's real time market, or to any other entity having jurisdiction pursuant to an order of the FERC, any Energy from the Facility that is available and not already Dispatched on a day-ahead basis by the Department ("Undispatched Energy"). Beginning January 1, 2003, in the event that CAISO or such other entity exercises any right it may have to purchase Undispatched Energy, Seller will for all Dispatches by CAISO or such other entity following execution of this Agreement, provide to Department all revenues within 20 days of receipt from CAISO or such other entity in respect of such sale, and the Department shall pay Seller the VO&M Payment, Fuel Payment, and Start-up Payment set forth in Article VII as if the sale of Energy was a sale to the Department.

**Section 5.07 No Third Party Sales.** Seller shall not make any sales of Energy from the Facility to any third party, or otherwise provide Energy from the Facility to any third party, except pursuant to Section 5.06 hereof.

## **ARTICLE VI FUEL**

**Section 6.01 Coordination of Fuel Procurement.** Seller shall manage and cause the delivery of all quantities of Fuel required by the Facility to generate the Net Electrical Output to the extent that the Department does not elect to supply such Fuel pursuant to its options to do so contained in Sections 6.02, 6.05 and 6.06. Seller and the Department agree and acknowledge

that, subject to Section 11.03, all Fuel Costs shall be borne solely by the Department, whether incurred by the Department or Seller. The Parties shall coordinate their nomination and scheduling of deliveries of Fuel, giving sufficient time to meet the deadlines of the applicable Fuel transporters. Each of the Parties acknowledges that volumes and deliveries of Fuel not nominated and scheduled on at least a day-ahead basis are subject to limited marketplace availability and substantial price volatility, and to the nomination and scheduling procedures and deadlines set forth in the transporter's tariff(s) and other applicable requirements. Except to the extent specifically agreed upon, nominated and scheduled by the parties, neither party makes any representation or warranty with respect to the availability of volumes or deliveries of Fuel. Seller's obligation to deliver Net Electrical Output is subject to, and dependent upon, the receipt of Fuel required to produce the Net Electrical Output. Seller shall use reasonable efforts to re-market any Fuel or Fuel transportation purchased pursuant to this Agreement but not consumed by the Facility due to non-operation, and the proceeds of such re-marketing will be used to partially offset the Fuel Costs. In the event that Fuel suppliers condition sales to Seller on receipt of a letter of credit, prepayment, escrow, or similar security from Seller, Seller may, by thirty (30) Days' prior written notice to the Department, suspend Seller's Fuel purchase obligations under this Article VI for as long as Fuel suppliers impose such conditions, in which case the Department shall supply all Fuel required by the Facility; provided, however, the Department may direct Seller to manage and arrange for the purchase of Fuel for the Facility as the Department's agent.

**Section 6.02 Monthly Fuel Procurement.** Within two (2) Business Days of its receipt of a Monthly Dispatch Schedule from the Department, Seller shall obtain a fixed price quote for the supply and delivery of Fuel expected to be necessary, after taking into account the quantities to be delivered under any existing Fuel Supply Contracts entered into by Seller and the Department, for the Facility to produce the amount of Net Electrical Output called for in such Monthly Dispatch Schedule. The Department shall have twenty-four (24) hours after its receipt of the fixed price quote from Seller in which to notify Seller in writing that the Department (a) accepts such quote, or (b) rejects such quote, or (c) elects to procure an equivalent alternate supply of Fuel for the Facility on Seller's behalf. In the event that any fixed price quotes obtained by Seller are not firm for the duration of the Department's review period, if the Department accepts a quote and prices quoted to Seller at the time of commitment to purchase have changed, the Department shall be deemed to have accepted the changed price provided that it is no more than four percent (4%) higher than the first quoted price. In the event that the Department fails to notify Seller within such twenty-four (24) hour period or rejects such quote for a given month, Seller will not purchase Fuel for the Facility until Seller receives from the Department a Weekly Dispatch Schedule at which time Seller will purchase Fuel at the then-prevailing Market Price, which the Department will be deemed to approve. Seller shall, by facsimile or e-mail, confirm to the Department its receipt of each Fuel quote acceptance and the final committed price.

**Section 6.03 Weekly Fuel Procurement.** In the event that any Weekly Dispatch Schedule provided to Seller by the Department differs from the schedule for such week in the applicable Monthly Dispatch Schedule, Seller shall notify the Department within twenty-four (24) hours of any expected Fuel Costs or difficulties expected to be incurred in modifying its scheduled deliveries of Fuel to support the Weekly Dispatch Schedule, following which the Department shall have twenty-four (24) hours from Seller's notification in which to notify Seller that it will accept and pay for all such additional Fuel Costs or revert to the schedule for such



week in the applicable Monthly Dispatch Schedule. If the Department fails to provide such notice, the Department shall be deemed to have elected to revert to the schedule for such week in the applicable Monthly Dispatch Schedule.

Section 6.04 Daily Fuel Procurement. In the event that any Dispatch Notice provided to Seller by the Department differs from the schedule for such Day in the relevant Monthly Dispatch Schedule (or such Day in the relevant Weekly Dispatch Schedule if it has been modified pursuant to Section 5.02), Seller shall use its commercially reasonable efforts to modify scheduled deliveries of Fuel to support the Dispatch Notice, and the Department shall bear all Fuel Costs incurred by on or behalf of Seller in making the modifications.

Section 6.05 Long Term Fuel Procurement.

(a) After consultation with the Department, Seller may solicit offers for the procurement and delivery of Fuel on a multi-month or multi-year basis ("Fuel Supply Contracts") and shall keep the Department apprised of such solicitations. Seller shall provide the Department with a copy of any Fuel Supply Contracts prior to execution for the Department's review and approval or disapproval, which approval or disapproval the Department shall provide by written notice to Seller within ten (10) Business Days after the Department's receipt of such Fuel Supply Contract. The Department acknowledges that, during such ten (10) Business Day approval period for a Fuel Supply Contract, the terms and conditions of the solicited Fuel bid (including, without limitation, pricing) may not be held firm by the bidder. If the Department fails to provide written notice of its approval or disapproval within the prescribed period, the Department shall be deemed to have rejected such Fuel Supply Contract. Seller shall not be obligated to enter into any Fuel Supply Contract that requires Seller to provide a letter of credit, prepayment, escrow, or similar security.

(b) Without limiting the above, the Department acknowledges that an affiliate of Seller has entered into a contract for the benefit of Seller for 85,000 million Btu/Day of firm gas transportation on Kern River Gas Transmission Company's pipeline expansion by contract dated May 29, 2001, and the Department hereby approves Seller's acceptance of assignment of such contract to Seller. During the Term, and to the extent that (i) the Department elects to supply Fuel to the Facility pursuant to Section 6.02 or Section 6.05, or (ii) the Department does not Dispatch the Facility in any given period, the Department shall have the right to use Seller's transportation rights on Kern River Gas Transmission Company's pipeline for other plants in the Department's portfolio or for resale (subject to the terms of the applicable gas transportation agreement with Kern River Gas Transmission Company for the Facility), and Seller shall make commercially reasonable efforts to facilitate such use by the Department. The Department shall reimburse Seller for all reasonable costs incurred by Seller relating to or arising from such use by the Department of such transportation rights on Kern River Gas Transmission Company's pipeline.

(c) In the event that the Department enters into a Fuel Supply Contract to supply Fuel to the Facility, the Department and Seller will coordinate the management of any such contract with any other Fuel Supply Contracts to which Seller is a party.

Section 6.06 Fuel Plan.

(a) [Reserved].

(b) For each full calendar year during the Term, the Department shall provide Seller a schedule indicating the expected level of Dispatch (Maximum Load, Full Load, Part Load, Minimum Load, or zero) of the Facility during the weekday peak and off-peak, Saturday peak and off-peak and Sunday/Holiday peak and off-peak periods of each month during the calendar year by August 1 prior to the commencement of the following calendar year ("Annual Dispatch Schedule"). By September 1, Seller shall provide to the Department a proposed Fuel Plan for the following calendar year based upon the Annual Dispatch Schedule. In lieu of providing an Annual Dispatch Schedule, the Department may, by written notice to Seller, by August 1 of any calendar year that the Department wishes to act in the role of Fuel Manager for the upcoming calendar year.

(c) The Department shall notify Seller in writing within fifteen (15) Days of the Department's receipt of a proposed Fuel Plan whether the Department approves of such proposed Fuel Plan. In the event that the Department does not accept a proposed Fuel Plan, Seller may amend such proposed Fuel Plan within seven (7) Days of the Department's notice of disapproval. If the Department does not accept Seller's amendments to a proposed Fuel Plan, the Department shall provide Fuel to the Facility for the period covered by the applicable proposed Fuel Plan; in such event, the provisions of Section 6.02, Section 6.03 and Section 6.04 shall not apply and Seller shall be obligated to deliver Net Electrical Output called for in a Dispatch Notice only to the extent that the Department delivers the Fuel necessary to generate such Net Electrical Output. In the event that the Department has rejected a proposed Fuel Plan, has opted to procure Fuel for the Facility but fails to deliver the necessary Fuel to meet the level of Net Electrical Output called for in a Dispatch Notice, Seller shall be excused from performance with respect to that portion of Net Electrical Output called for in such Dispatch Notice for which the Department has failed to deliver Fuel, provided, however, Seller shall be completely excused from performance under such Dispatch Notice if the Department fails to deliver sufficient Fuel to the Facility to operate at least at Minimum Load. In the event the Department elects to provide Fuel to the Facility, Seller shall continue to provide Fuel and transportation services for any contract previously entered into by Seller as approved by the Department, the term of which extends into the calendar year for which the Department elects to provide Fuel to the Facility. Election by the Department to provide Fuel in any calendar year shall not excuse Seller from preparing a proposed Fuel Plan for subsequent calendar years. In such event, Seller shall create such new Fuel Plan based upon existing contracts for Fuel and transportation which have been entered into previously by Seller with the Department's approval in accordance with a previously approved Fuel Plan, and contracts which the Department has entered into.

Section 6.07 Fuel Manager. Seller may at its sole discretion contract with a Fuel Manager to procure and manage the delivery of Fuel to the Facility.

## **ARTICLE VII PAYMENTS**

Section 7.01 Capacity Payments. Seller shall be entitled to receive and the Department shall pay Seller amounts for the Contract Capacity (“Capacity Payments”) calculated as follows:

(a) Subject to Article VIII, commencing on Phase 1A COD and ending upon Phase 2 COD, the Department shall pay Seller a Capacity Payment which shall be equal to the Contract Capacity (expressed in MW, to two decimal places) multiplied by the payment rate applicable to the relevant Invoice Month set forth in the following table:

<b>Phase 1 Capacity Payments – \$/MW-month</b>	
Jan, Feb, Mar, Oct, Nov, Dec	\$2,250
Apr, May	\$750
Jun, Jul, Aug, Sep	\$26,250

The Capacity Payment for the period, if any, during which Phase 1A COD has occurred but Phase 1B COD has not been achieved shall be based on the daily weighted average Contract Capacity during such period. The Capacity Payment for the month in which Phase 2 COD occurs shall be based on the daily weighted average Contract Capacity and corresponding Phase 1 and Phase 2 payment rates applicable during such month. Notwithstanding the foregoing, in the event that the Conversion Period coincides with a Summer Period for all or a portion of a calendar month, the Capacity Payment for such month will be based on the daily weighted average Contract Capacity delivered or made available and the Phase 1 or Phase 2 payment rate applicable during such month.

(b) Subject to Article VIII, commencing on Phase 2 COD, the Department shall pay Seller a Capacity Payment (“Phase 2 Capacity Payment”), which shall be equal to the Contract Capacity (expressed in MW, to two decimal places) multiplied by the payment rate applicable to the relevant Invoice Month set forth in the following table:

<b>Phase 2 Capacity Payments– \$/MW-month</b>	
Jan, Feb, Mar, Oct, Nov, Dec	\$3,420
Apr, May	\$1,330
Jun, Jul, Aug, Sep	\$36,860

Section 7.02 Variable O&M Payments. Each month during the Term, the Department shall pay Seller a variable operation and maintenance payment (“VO&M Payment”) in the amount of \$3.00/MWh multiplied by the Net Electrical Output delivered in such month.

Section 7.03 Fuel Payments. Subject to Section 11.03, the Department shall reimburse Seller on a monthly basis for all Fuel Costs (such payment, the “Fuel Payment”).

Section 7.04 Start-Up Payments. The Department shall pay Seller the following Start-Up payments (“Start-up Payments”): (a) for each Start-Up or shut-down of the Facility that the Department schedules to occur during a “peak period” as defined in the Utility Rate, the actual demand and energy charges incurred by Seller under the Utility Rate as a result of such Start-Up or shut-down, and (b) an amount equal to the number of Start-Ups of each Unit of the Facility in excess of one hundred (100) Start-Ups of each Unit per year multiplied by the corresponding \$/start in the table below:

<b>Number of Start-Ups per calendar year</b>			
	101-135	136-150	> 150
\$/start	\$300	\$5,000	\$14,000

Section 7.05 Accelerated Maintenance. In the event of an Unscheduled Outage of the Facility, Seller shall, if requested by the Department, complete repairs to the Facility on an accelerated basis (to the extent achievable and consistent with Accepted Electrical Practices), and the Department shall pay for the incremental cost of such acceleration, provided that the scope and incremental costs have been approved by the Department prior to the repairs being made.

## **ARTICLE VIII ADJUSTMENTS TO CAPACITY PAYMENTS**

Section 8.01 Adjustments Based on Increased Operations. The Department acknowledges that Seller has received all necessary additional permits and/or amendments to its existing permits to allow Seller to increase the Facility’s or any Unit’s operation during Phase 1 in excess of the original Permit Limits in effect as of the date of the Original Confirmation Agreement. The Department further acknowledges that Schedule A was amended to reflect such increased hours of operation and the Department Dispatched the Facility consistent with Seller’s permitted ability to operate on an increased hourly basis and paid Seller a one-time payment equal to \$607,452 to reimburse Seller’s costs of incremental emission credits for such increased operations.

Section 8.02 Adjustments Based on Capital Costs. Within seventy (70) Days after Phase 2 COD, Seller shall provide the Department a schedule of Actual Capital Costs.

(a) For each one hundred thousand dollars (\$100,000) by which Actual Capital Costs exceed Estimated Capital Costs, the Phase 2 Capacity Payment shall be increased by (i) \$1.90/MW-month for exceedances in Capital Costs incurred to complete the Facility in its Phase 1 configuration, and (ii) \$1.50/MW-month for savings in Capital Costs incurred to complete the Facility in its Phase 2 configuration.

(b) For each one hundred thousand dollars (\$100,000) by which Estimated Capital Costs exceed Actual Capital Costs, the Phase 2 Capacity Payment set forth in Section 7.01(b) shall be decreased by (i) \$3.80/MW-month for exceedances in Capital Costs incurred to complete the Facility in its Phase 1 configuration, and (ii) \$3.00/MW-month for exceedances in Capital Costs incurred to complete the Facility in its Phase 2 configuration.

(c) The adjustment for Capital Cost differences of other than even increments of one hundred thousand dollars (\$100,000) shall be calculated on a proportional basis, except that no adjustment shall be made if the entire Capital Cost difference is less than one hundred thousand dollars (\$100,000). The Department shall have the right to audit Seller's records and supporting documentation for Actual Capital Costs in accordance with Section 6.10 of the Master Agreement.

(d) Any payments from the equipment suppliers and contractors for construction of the Facility in its Phase 2 configuration that are received by Seller as liquidated damages for failure of the Facility to achieve the Contract Heat Rate equal to the guarantee (after allowance for applicable test tolerances) for the Facility, shall be treated as a reduction of the Actual Capital Costs.

Section 8.03 Adjustments Based on Actual Summer Availability. Within fifteen (15) Days following the end of each Summer Period during the Term, Seller shall provide the Department with a statement setting forth the Summer Availability achieved by the Facility during the immediately preceding Summer Period, calculated according to the formula set forth in Section 8.05 below.

(a) In the event that the Summer Availability for such Summer Period exceeds the applicable Contract Availability, then within thirty (30) days following the Department's receipt of the statement described above, the Department shall pay Seller an amount equal to the sum of the Capacity Payments paid to Seller during such Summer Period multiplied by the lesser of (i) the amount by which the Summer Availability for such Summer Period exceeds the applicable Contract Availability, and (ii) five percent (5%).

(b) In the event that the Summer Availability for such Summer Period is less than the applicable Contract Availability, then within thirty (30) Days following the Department's receipt of the statement described above, Seller shall pay the Department an amount equal to the sum of the Capacity Payments paid to Seller during such Summer Period multiplied by the lesser of (i) the amount by which the Summer Availability for such Summer Period is less than the applicable Contract Availability, and (ii) twelve and one-half percent (12.5%).

Section 8.04 Adjustments Based on Actual Annual Availability. Within fifteen (15) days following the end of each calendar year during the Term, Seller shall provide the Department with a statement setting forth the Annual Availability achieved by the Facility during the immediately preceding calendar year, calculated according to the formula set forth in Section 8.05 below.

(a) In the event that the Annual Availability for such calendar year exceeds the applicable Contract Availability, then within thirty (30) days following the Department's receipt of the statement described above, the Department shall pay Seller an amount equal to the sum of the Capacity Payments paid to Seller during such calendar year multiplied by the lesser of (i) the amount by which the Annual Availability for such calendar year exceeds the applicable Contract Availability, and (ii) ten percent (10%).

(b) In the event that the Annual Availability for such calendar year is less than the applicable Contract Availability, then within thirty (30) days following the Department's receipt of the statement described above, Seller shall pay the Department an amount equal to the sum of the Capacity Payments paid to Seller during such calendar year multiplied by the lesser of (i) the amount by which the Annual Availability for such calendar year is less than the applicable Contract Availability, and (ii) twenty percent (20%).

**Section 8.05 Calculation of Availability During Summer Period and on an Annual Basis.** Availability during a given Summer Period ("Summer Availability") or during any Annual Period ("Annual Availability") shall be calculated according to the following formula (but in no event shall Availability during any period exceed 100%, notwithstanding anything to the contrary herein):

Availability during relevant period (i.e., Summer Period or Annual Period) = SHA / BPH

*Where* BPH = the number of hours in the relevant Summer Period or Annual Period, minus the number of Excused Hours during such Summer Period or Annual Period.

*And* SHA = the sum of the Hourly Availabilities determined for each hour in the relevant Summer Period or Annual Period, where each Hourly Availability is determined in accordance with the following formula:

Hourly Availability =  $[HN - (HS - HD)] / HC$

*Where* HN = the hourly amount of Net Electrical Output that Seller informs Department will be available pursuant to its Availability Notice

*And* HS = the hourly amount of Net Electrical Output scheduled by the Department to be delivered pursuant to its Dispatch Notice

*And* HD = the total Net Electrical Output actually delivered in the hour, adjusted to the ambient conditions set forth in the Weather Forecast for such hour.

*And* HC = the hourly amount of Net Electrical Output that would have been available if the Facility was run at Contract Capacity, adjusted to the ambient conditions set forth in the Weather Forecast for such hour.

The parties hereto acknowledge that the difference between HS and HD shall equal zero, for purposes of the formula set forth above, for any hour that the amount of hourly Net Electrical Output scheduled by the Department to be delivered is equal to the total Net Electrical Output actually delivered in the hour.

## **ARTICLE IX METERING**

**Section 9.01 Metering.** The terms of that certain Meter Service Agreement for ISO Metered Entities, dated May 3, 2001, by and between Seller and the CAISO, a copy of which is attached hereto as Exhibit B, is hereby incorporated by reference.

Section 9.02 Real Time Data. Seller shall provide, at the Department's option and expense, access to real-time meter data via appropriate telecommunications equipment.

## **ARTICLE X TEST ENERGY**

Section 10.01 Test Energy. Seller shall coordinate the production and delivery of Test Energy with the Department. Test Energy for Phase 1 Term may commence on or after June 15, 2001. Test Energy for Phase 2 Term may commence on or after February 1, 2003. The Department shall cooperate with Seller to facilitate Seller's testing of the Facility and shall purchase all Test Energy delivered to CAISO for the Department's account during the Term of this Agreement at a price of ten dollars (\$10) per MWh plus the VO&M Payment and Fuel Payment delineated in Sections 7.02 and 7.03 respectively.

## **ARTICLE XI HEAT RATE AND HEAT RATE TESTING**

Section 11.01 Heat Rate. The heat rate for the Facility at Standard Site Conditions, Full Load, and "new & clean" condition expressed in Btu/kWh HHV (the "Contract Heat Rate") shall be as follows:

(a) During Phase 1, the Contract Heat Rate shall be the result of the heat rate test of the Facility conducted in connection with Seller's acceptance of the Facility in its Phase 1 configuration from the primary contractor constructing the Facility; and

(b) During Phase 2, the Contract Heat Rate shall be the result of the heat rate test of the Facility conducted in connection with Seller's acceptance of the Facility in its Phase 2 configuration from the primary contractor constructing the Facility. Such test shall be conducted with the Facility at Full Load, according to procedures no less restrictive than those of Section 11.02(a). In the event that the Contract Heat Rate for Phase 2 (as corrected for Standard Site Conditions and for degradation back to "new and clean" conditions) is in excess of 7,315 Btu/kWh HHV, Seller shall enforce the agreements under which the Facility and its components were procured and constructed to cause such heat rate to be achieved. In the event that the Facility is operating above a heat rate of 7206 Btu/kWh HHV (equal to the target heat rate of 7,100 Btu/kWh HHV plus a test tolerance of 1.5%, as corrected for standard Site Conditions and for degradation back to "new and clean" conditions), Seller agrees to provide to Department all contracts, guarantees and other relevant documents necessary for Department to ensure that Seller is fully enforcing its rights against any third party to either collect any damages and/or to require any such third party to cure any defect[s] at the Facility that may be causing operation above a heat rate of 7206 Btu/kWh HHV.

The parties acknowledge that the heat rate for the Facility will be higher than the Contract Heat Rate at Minimum Load, Part Load and Maximum Load due to the corresponding off-design operating conditions.

### Section 11.02 Heat Rate Testing.

- (a) The Actual Heat Rate for the Facility shall be determined at the times specified in Section 11.03(a) by heat rate testing at Full Load, corrected for Standard Site Conditions and for degradation back to "new and clean" conditions. Testing shall be performed in accordance with test procedures to be prepared by Seller and submitted to the Department for review and approval, such approval not to be unreasonably withheld or delayed. Seller's heat rate test procedures will be in general accordance with ASME Power Test Code 22 for Phase 1 testing, and in general accordance with ASME Power Test Code 46 for Phase 2 testing. The heat rate test corrections shall include, without limitation, ambient temperature, relative humidity, barometric pressure, natural gas fuel conditions, generator power factor and equipment degradation.
- (b) Seller shall be responsible for the full scope of heat rate testing, including but not limited to, furnishing the test instrumentation, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report.
- (c) Seller shall provide all raw test data, calculations, fuel analyses and final reports in written and, to the extent reasonably possible, electronic format, to the Department for review.
- (d) Seller shall provide to the Department all equipment specifications, correction curves, equations and other information necessary for review of the heat rate test results.
- (e) At Seller's discretion, the initial heat rate test may be the acceptance test of the original equipment manufacturer, provided such test is performed under the guidelines set forth in Section 11.02(a), and witnessed by one or more representatives of the Department.

### Section 11.03 Heat Rate Adjustments to Payments.

- (a) Not later than thirty (30) Days following the end of each April and October during the Term, Seller shall prepare a statement setting forth the results of a heat rate test conducted pursuant to Section 11.02 above. Within forty (40) Days following the end of each April and October during the Term, Seller shall provide the Department with a statement setting forth the calculations prescribed in Sections 11.03(b) and 11.03(c) below, and any payment due to the Department or Seller pursuant to this Section 11.03 shall be paid within thirty (30) Days following the Department's receipt of such statement.
- (b) In the event that the Actual Heat Rate determined in the heat rate test conducted during any April or October pursuant to Section 11.02 above divided by the applicable Contract Heat Rate (expressed as a percentage, the "Heat Rate Ratio") exceeds one hundred three percent (103%), Seller shall pay the Department an amount equal to the product of (x) the sum of the Fuel Costs for the six calendar months ended as of the end of the applicable April or October, and (y) the applicable Heat Rate Ratio less one hundred three percent (103%).
- (c) In the event that the Heat Rate Ratio determined during any April or October is less than ninety-seven percent (97%) of the applicable Contract Heat Rate, the



Department shall pay Seller an amount equal to the product of (x) the sum of the Fuel Costs for the six calendar months ended as of the end of the applicable April or October, and (y) ninety-seven percent (97%) less the applicable Heat Rate Ratio.

## **ARTICLE XII TERMINATION**

Section 12.01 Termination. This Agreement and the Master Agreement shall continue for the Term unless terminated as follows:

- (a) By the mutual agreement of the parties hereto;
- (b) By Seller, upon the occurrence of a Downgrade Event as set forth in the Master Agreement;
- (c) In connection with a continuing Force Majeure as set forth in the Master Agreement;
- (d) In connection with an Event of Default as set forth in the Master Agreement;
- (e) In connection with an Event of Termination Default as set forth in the Master Agreement; or
- (f) By either party in the event that Phase 2 COD shall not have occurred by June 1, 2004.

Neither party shall be entitled to receive a Termination Payment (as defined in Section 5.2 of the Master Agreement) in connection with termination of this Agreement and the Master Agreement for any reason other than Section 12.01(d) above.

## **ARTICLE XIII MISCELLANEOUS**

Section 13.01 Financing; Consent to Assignment. The parties recognize and agree that Seller's interest in the Facility and Seller's rights under this Agreement and the Master Agreement may be mortgaged, pledged or otherwise encumbered in order to provide security or collateral in order to finance the construction and/or operation of the Facility. The Department shall execute any consents, approvals or other documentation as the lenders may reasonably request to evidence such assignment in accordance with customary practices in transactions of this nature, including a Consent and Agreement in the form of Exhibit C attached hereto.

Section 13.02 Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another

counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 13.03 Entire Agreement. This Agreement and the Master Agreement when executed and delivered, shall constitute one, single integrated agreement and set forth the entire agreement by and between the parties and supersedes any prior understandings, agreements or representation by or between the parties, written or oral, to the extent they have related in any way to the subject matter hereof and thereof (including, without limitation, the Original Master Agreement and the Original Confirmation Agreement), except as set forth in Section 2.01 hereof. Notwithstanding anything to the contrary, in the event of a conflict or an inconsistency between this Agreement and the Master Agreement, the terms of this Agreement shall control.

Section 13.04 Change in Law or Regulation. The Department and Seller acknowledge that market prices for Energy and capacity are subject to significant fluctuations over time, that the payments to Seller provided for in this Agreement may be lower or higher relative to prevailing market prices at any given time or in total, and that neither condition shall affect the binding nature of this Agreement. However, in the event that a change in California Law subsequent to the date of this Agreement has the effect of imposing additional costs on Seller beyond those that would have been imposed prior to such change in California Law, the Department and Seller shall in good faith negotiate and make changes to this Agreement and/or the payments contemplated hereunder that will have the effect of leaving Seller no worse off than if the change in California Law had not occurred.

{The remainder of this page is intentionally left blank.}

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first written above.

**DEPARTMENT OF WATER RESOURCES**

By: \_\_\_\_\_  
Name:  
Title:

**SUNRISE POWER COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Schedule A**  
**Permit Limits**

Phase 1

During 2001, each Unit may operate no more than (x) 950 hours during the period from July 1 through September 30, and (y) 200 hours during the period from October 1 through December 31. For each Start-Up of a Unit in excess of 60 times during period (x) or 13 times during period (y), the maximum allowable number of operating hours during such period shall be reduced by 1.1 hours.

During 2002, each Unit may operate no more than (a) 200 hours during the period from January 1 through March 31, (b) 384 hours during the period from April 1 through June 30, (c) 950 hours during the period from July 1 through September 30, and (d) 200 hours during the period from October 1 through December 31. For each Start-Up of a Unit in excess of 13 times during period (a), 24 times during period (b), 60 times during period (c), or 13 times during period (d) the maximum allowable number of operating hours during such period shall be reduced by 1.1 hours.

In the event that Phase 1 is extended into 2003, the same limits shall apply as those for 2002.

No Unit may be operated at a load below Minimum Load during any year, except during Start-Up or shut-down.

Phase 2

During Phase 2, each Unit may operate no more than 8,600 hours during any 12 consecutive months. For each Start-Up of a Unit in excess of 12 times during any such 12 consecutive months, the maximum allowable number of operating hours of such Unit during such period shall be reduced by 70 hours for a “cold start”, 31 hours for a “warm start”, and 19 hours for a “hot start”; provided however, that for Start-ups of a Unit in excess of 90 during any such 12 consecutive months, the maximum allowable number of operating hours of such Unit during such period shall be reduced by 140 hours for a “cold start”, 78 hours for a “warm start”, and 44 hours for a “hot start”. No more than one Start-up of a Unit may occur on any day. For the purposes of the Permit Limits, a “cold start” of a Unit is one in which the Unit has been off-line for more than 48 hours, a “warm start” is one in which the Unit has been off-line for 8 to 48 hours, a “hot start” is one in which the Unit has been off-line for less than 8 hours.

For each hour in which a Unit operates at Maximum Load in excess of 5,900 hours during any 12 consecutive months, the maximum allowable number of operating hours during such period shall be reduced by 0.5 hours. For each hour by which Maximum Load operation is less than 5,900 hours during any 12 consecutive months, the maximum allowable number of operating hours during such period shall be increased by 0.5 hours.

The Department shall be entitled to schedule operation of the Facility in excess of the number of hours determined pursuant to the foregoing if, and to the extent that, Seller reasonably determines that such additional operation is available from time to time under the Facility's environmental permits.

No Unit may be operated at a load below Minimum Load at any time except during Start-Up or shut-down.

## Schedule B

### Estimated Capital Costs

	SIMPLE CYCLE	COMBINED CYCLE CONVERSION
Cost Category	\$000	\$000
<b><i>Plant &amp; Equipment</i></b>		
Combustion Turbines	\$80,000.0	
Heat Recovery Steam Generators & Steam Turbine		\$45,700.0
Engineer/Procure/Construct (EPC) Contract	\$61,368.0	\$125,393.6
Dry Cooling Option	n/a	n/a
Substation Interconnection	\$13,005.2	\$2,000.0
Transmission Line/Switchyard Upgrades	<i>Incl. with EPC</i>	\$5,297.8
Gas Pipeline & Metering Station	<i>Incl. with EPC</i>	<i>Incl. with EPC</i>
Water Supply Interconnection	<i>Incl. with EPC</i>	\$13,200.0
Waste Water Disposal Pipe & Wells	\$400.0	\$1,500.0
Union Craft Labor Incentives	\$500.0	\$0.0
Additional General Electric Commissioning Support	\$400.0	\$0.0
Emission Offsets	\$3,582.0	\$4,370.0
Permit / County Building Office Fees	\$800.0	\$800.0
EPC Contractor Schedule Bonus	\$300.0	\$0.0
EPC Contractor Start-Up Services	<i>Incl. with EPC</i>	<i>Incl. with EPC</i>
Initial Spare Parts	\$4,194.1	\$660.0
Pre-Commercial Capital (tools, office & shop equipment, software, etc.)	\$495.3	\$302.2
Pre-Commercial Operations & Maintenance	\$524.6	\$315.8
Pre-Commercial Fuel* & Purchased Power	\$288.0	\$343.0
Initial Fills of Consumables	\$0.0	\$102.9
<b>TOTAL Plant &amp; Equipment</b>	<b>\$165,857.2</b>	<b>\$199,985.3</b>
Owner's Contingency	\$0.0	\$0.0
Sales Taxes	\$6,445.0	\$6,440.1
Land / Rights of Way	\$300.0	\$200.0
<b>TOTAL Hard Cost</b>	<b>\$172,602.2</b>	<b>\$206,625.4</b>
<b>GRAND TOTAL Hard Cost</b>	<b>\$379,227.6</b>	

\* other than during production of Test Energy

# Exhibit A

## FORM OF DISPATCH NOTICE

### SUNRISE POWER COMPANY AVAILABILITY & DISPATCH NOTICE

For: [Fri, December 20, 2002](#)

recd 12/17/02 @ 2113

		<div>0 &lt;--Revision #</div>		Non-Standard Operational Events (see Comments)	<div>0 &lt;--Revision #</div>		Estimated Natural Gas Required MMBtu
Hour Ending	Temp.	Available Net Electrical Output at Delivery Point			Dispatched Net Electrical Output at Delivery Point	Scheduled with CAISO	
		Units	Megawatts		Megawatts	Megawatts	
1	59F	2	328		0	0	0
2	59F	2	329		0	0	0
3	59F	2	329		0	0	0
4	59F	2	330		0	0	0
5	59F	2	331		0	0	0
6	59F	2	330		0	0	0
7	59F	2	329		0	0	0
8	59F	2	329		0	0	0
9	59F	2	328		0	0	0
10	59F	2	326		0	0	0
11	59F	2	326		0	0	0
12	59F	2	324		0	0	0
13	59F	2	324		0	0	0
14	59F	2	323		0	0	0
15	59F	2	323		0	0	0
16	59F	2	323		0	0	0
17	59F	2	322		154	150	1,602
18	59F	2	323		323	315	3,359
19	59F	2	323		323	315	3,359
20	59F	2	323		323	315	3,359
21	59F	2	324		324	316	3,370
22	59F	2	324		324	316	3,370
23	59F	2	326		326	318	3,390
24	59F	2	326		0	0	0
		Total:	7821		Total:	2097	Total: 2045

Comments:		<b>Fuel Supply for Dispatch</b>	
		HE 1 - 7 =	0
		Machine Starts =	0
Expected Daily Temperatures, F		Startup Fuel =	0
<div>41</div> <div>53</div> <div>Low</div> <div>High</div>	<b>Contact Information:</b> Scheduling Coordinator: <u>Chris Jylkka</u> 617/912-5978 Plant Supervisor: <u>David Leach</u> 661/768-5570	Total HE 1 - 7 = 0	
		HE 8 - 24 =	21,809
		Machine Starts =	2
		Startup Fuel =	500
		Total HE 8 - 24 =	22,309



**Exhibit B**

**Metering Services Agreement**

**Exhibit C**

**Form of Consent and Agreement**

## CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT ("Consent and Agreement") is entered into as of [Date] among California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code, and not under its powers and responsibilities with respect to the California State Water Resources Development System (the "Consenting Party"), [insert name of agent], as agent on behalf of the lenders party to the [Bank Document] (as defined below) (the "Assignee") and Sunrise Power Company, LLC, a limited liability company (the "Assignor").

WHEREAS, the Assignor and the Consenting Party have entered into a Master Purchase and Sale Agreement (Version 2.1; modified 4/25/00) dated June 25, 2001, and a related Confirmation Agreement, dated June 25, 2001 (collectively, the "Assigned Agreement"), whereby the Consenting Party has agreed to purchase electric capacity and energy from Assignor's natural gas-fired power plant known as the Sunrise Power Plant located in Kern County, California (the "Project").

WHEREAS, [describe Bank Document].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

Section 1: Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

Section 2: Consent and Agreement. (a) The Consenting Party consents to and approves the assignment of the Assigned Agreement pursuant to the [Bank Document] to (i) the Assignee as collateral security for the payment of all amounts payable by the Assignor under the [Bank Document], and (ii) any nominee, transferee or assignee of, or successor to, the Assignee, which nominee, transferee, assignee or successor shall be reasonably satisfactory to the Consenting Party; and (iii) the subsequent transfer of the Assigned Agreement to any person reasonably satisfactory to the Consenting Party in connection with the Assignee's or any permitted successor transferee's exercise of its rights and remedies under the [Bank Document] and related documents following the occurrence of an event of default by the Assignor under the [Bank Document] (any person to whom an assignment may be made pursuant to (ii) or (iii) of this Section 2 being referred to as "Permitted Transferee").

(b) The Assignee (and any successor Permitted Transferees) shall have no rights with respect to the Assigned Agreement until the transfer thereof to Assignee or a successor Permitted Transferee except for the Assignee's rights set forth in Sections 4 and 6 that shall arise as of the date of this Consent and Agreement. The Assignee's (and any successor Permitted Transferee's) rights hereunder following transfer of the Assigned Agreement to Assignee or a successor Permitted Transferees shall be subject to the conditions that (i) the Assignee, including any successor Permitted Transferees, shall have assumed in writing all of the duties and obligations of the Assignor under the Assigned Agreement arising on or after the date of such assumption,

(ii) no default shall have occurred and be continuing under the Assigned Agreement except for any such default which has been cured or is in the process of being cured within the applicable cure period in accordance with Section 4, and (iii) any successor transferee shall be a Permitted Transferee. The Assignee shall not be liable for the performance or observance of any of the obligations or duties of the Assignor under the Assigned Agreement, nor shall the assignment thereof give rise to any duties or obligations whatsoever on the part of the Assignee owing to the Consenting Party except that, insofar as the Assignee exercises any of its rights under the Assigned Agreement or makes any claims with respect to any payments, deliveries or other obligations under the Assigned Agreement, the terms and conditions of the Assigned Agreement, otherwise applicable in respect of such rights being exercised or such claims being made shall apply to the Assignee and require the Assignee's performance of such related obligations to the same extent as they would otherwise apply to the Assignor; provided, however, that Assignee or a successor Permitted Transferee shall have no rights with respect to the Assigned Agreement until the transfer thereof to Assignee or a successor Permitted Transferee (except for the Assignee's rights set forth in Sections 4 and 6 hereof that shall arise as of the date of this Consent and Agreement) and shall not exercise any rights or make any claims under the Assigned Agreement following transfer of the Assigned Agreement to Assignee or a successor Permitted Transferee until Assignee shall have complied with this Section 2(b); provided, further, however, that neither any exercise of any rights nor any making of any claims by the Assignee or any Permitted Transferee to or of the Assignee shall prejudice the rights of the Consenting Party against the Assignor in respect of any obligations or liabilities of the Assignor under the Assigned Agreement (or any offsets or claims of the Consenting Party against the Assignor thereunder) occurring prior to the time such Person shall have acquired and assumed the rights and obligations of the Assignor thereunder.

Section 3: No Current Defaults; Other Representations. The Consenting Party hereby represents and warrants to Assignee that as of the date hereof (a) each of the Assigned Agreement and this Consent and Agreement is in full force and effect and, except as set forth on Schedule A hereto, there are no amendments, modifications or supplements to the Assigned Agreement, either oral or written; (b ) the Consenting Party has the requisite power and authority to execute and deliver the Assigned Agreement and this Consent and Agreement and to perform its obligations hereunder and thereunder; (c) the Assigned Agreement and the Consent and Agreement have been duly authorized, executed, and delivered by the Consenting Party and each constitutes the legal, valid and binding obligation of the Consenting Party, enforceable in accordance with its terms except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally or by general principles of equity, including the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in proceeding in equity or at law, or by principles of public policy; (d) the execution and delivery of the Assigned Agreement and the Consent and Agreement by the Consenting Party and the performance of the transactions contemplated herein and therein by the Consenting Party do not and will not (i) result in the violation by the Consenting Party of any provision of the California Constitution or any law, statute, rule or regulation, (ii) result in a default by the Consenting Party under, or any breach by the Consenting Party of, any indenture, mortgage, deed of trust, loan agreement or other evidence of indebtedness, or any agreement or instrument to which the Consenting Party is a party or by which the Consenting Party or its assets or properties are

bound, or (iii) result in the violation by the Consenting Party of any judgment, order, writ, injunction or decree of any court or governmental agency or body binding upon the Consenting Party or any of its assets or properties; (e) no consent, waiver, approval, authorization or order of, or registration, filing or qualification with or declaration to ("Approvals"), any governmental agency or body is required of the Consenting Party in connection with the execution and delivery or the performance of the Agreements or the transactions contemplated therein, other than those Approvals already obtained or made by the Consenting Party and such obtained Approvals are in full force and effect; (f) except as set forth on Schedule B attached hereto, there is no litigation, action, suit, investigation or proceeding pending or threatened against or affecting the Consenting Party before or by any court, administrative or regulatory agency, governmental authority, body or agency, or arbitrator which (i) could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under the Assigned Agreement or this Consent and Agreement, or (ii) questions the validity, binding effect or enforceability of the Assigned Agreement or this Consent and Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby; (g) the Consenting Party has not assigned, transferred, pledged or hypothecated the Assigned Agreement or any interest therein except for a transfer, sale, pledge, encumbrance or assignment of a security interest solely to a bond trustee as security for payment of bonds issued by the Consenting Party; (h) the Consenting Party has no knowledge of any default by the Assignor in any respect in the performance of any provision of the Assigned Agreement or an event or condition which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreement; and (i) none of the Assignor's rights under the Assigned Agreement have been expressly waived in writing by the Consenting Party. Subject to giving a copy of a notice thereof to the Assignee or the Permitted Transferee, nothing herein shall affect the Consenting Party's ability to terminate the Assigned Agreement at its option pursuant to Section 3.3(c) of the Master Agreement or Section 12.01(f) of the Confirmation Agreement.

Section 4: Notice of Assignor's Default and Termination. (a) Notwithstanding anything to the contrary contained in the Assigned Agreement or in this Consent and Agreement, for so long as any loans or other obligations are outstanding under the [Bank Document] and until the same have been terminated or satisfied in full, as the case may be, the Consenting Party shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, other than as the result of any default or other action or omission of the Assignor; provided that the Consenting Party shall not, except as provided in the Assigned Agreement, exercise any such right that may arise as a result of a default or other act or omission of the Assignor, without giving a copy of a notice of default to the Assignee or the Permitted Transferee, simultaneously with delivering such notice to Assignor under Section 5.1 of the Assigned Agreement such notice to be coupled with an opportunity to cure any such default, action or omission, if such default, act or omission is capable of cure, within thirty (30) days after the last day of the cure period available to the Assignor in the Assigned Agreement (except with respect to payment defaults, which cure must be made within ten (10) days after the last day of the cure period available to the Assignor in the Assigned Agreement with respect to payment defaults), such cure period to commence upon receipt of notice by the Assignee; provided that the aggregate cure period available to the Assignee under this Section 4, together with the cure period available to the Assignor in the Assigned Agreement, shall not exceed one hundred eighty

(180) days (or, in the case of payment defaults, 15 days after notice is given to the Assignee or the Permitted Transferee).

(b) Such notice of default, act or omission shall be in writing and shall be deemed to have been given (i) when presented personally to the Assignee at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith), (ii) one (1) business day after being deposited for overnight delivery with a nationally recognized overnight courier service or such later date as demonstrated by a bona fide receipt therefor at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith), (iii) when received by the Assignee, if deposited in a regularly maintained receptacle for the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the Assignee at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith) or (iv) when transmitted by telecopy to the number specified below and the receipt thereof is confirmed telephonically by the recipient, provided that such telecopy is then promptly followed by a copy of such notice delivered by a method specified in clauses (i), (ii) or (iii) immediately above.

Notice to Assignee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

Facsimile:

Except to the extent that automatic cancellation, suspension or termination occurs pursuant to the terms of the Assigned Agreement, no cancellation, suspension or termination of the Assigned Agreement by the Consenting Party, or any of the other actions taken by the Consenting Party under the Assigned Agreement, shall be binding upon the Assignee without such notice and the opportunity to cure during the applicable extended cure periods specified in this Section 4. If the Assignee fails to cure or rectify the effect of a default, action or omission within the extended cure periods specified in this Section 4, the Consenting Party shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

Section 5: No Amendments Without Consent. The Consenting Party shall not amend the Assigned Agreement without the Assignee's prior written consent, which consent shall not be unreasonably withheld.

Section 6: Payments to Revenue Account. Notwithstanding anything to the contrary contained in the Assigned Agreement or in this Consent and Agreement, the Consenting Party hereby agrees that, so long as any loans, letters of credit, commitments or other obligations are outstanding under the [Bank Document] and until the same have been terminated or satisfied in full, as the case may be, all payments to be made by the Consenting Party pursuant to the Assigned Agreement shall be made in lawful money of the United States of America, by check or in immediately available funds. The Assignor hereby directs the Consenting Party to make,

and the Consenting Party hereby agrees to make, all such payments (after giving effect to all netting and offset provisions, if any, and all conditions precedent to such payments set forth in the Assigned Agreement) pursuant to the Assigned Agreement directly to the Assignee, for deposit into Account No. \_\_\_\_\_ at \_\_\_\_\_, or to such other person and/or at such other address or account as the Assignee may from time to time specify in writing to the Consenting Party.

Section 7: Protection of Assignee. Subject to the provisions of Section 2(b) and to the extent permitted by applicable law, in the event that either (i) any of the Assignor's interest in the Project shall be sold, assigned or otherwise transferred pursuant to the exercise of any right, power or remedy by the Assignee or pursuant to judicial proceedings (other than any assignment of Assignor's interests in the Assigned Agreement made and affirmed under 11 U.S.C. 365 or under a confirmed plan of reorganization under the U.S. Bankruptcy Code), or (ii) the Assigned Agreement is rejected under Title 11, United States Code, or other similar Federal or state statute and such rejection is approved by the appropriate court or is otherwise effective pursuant to such statute, and in either such case the Assignee shall have arranged for the curing of any default, action or omission under the Assigned Agreement susceptible of being cured by the Assignee or by a Permitted Transferee at any judicial or non-judicial sale and shall use reasonable efforts to mitigate or remediate any default, action or omission under the Assigned Agreement not susceptible of being cured by the Permitted Transferee, then the Consenting Party shall, within thirty (30) days after receipt by the Consenting Party of the latter of (a) of written request therefor, which request shall be made not more than thirty (30) days after the Assignee's receipt of notice of the event described in clause (i) or (ii) above, as applicable, and (b) of such information as the Consenting Party may reasonably request regarding the Permitted Transferee, including, but not limited to, information regarding the creditworthiness, identity, business practice, experience in the generation business, of such Permitted Transferee, execute and deliver an agreement to the Assignee or Permitted Transferee for the remainder of the term of the Assigned Agreement, and with substantially the same terms as are contained in the Assigned Agreement. References in this Consent and Agreement to "Assigned Agreement" shall be deemed also to refer to such new agreement. Such new agreement shall not be effective unless and until such defaults under the Assigned Agreement have been cured, except for any defaults that are not capable of being cured. Furthermore, such new agreement shall provide that an Event of Default shall not include any determination by any court or regulatory authority exercising competent jurisdiction that such new agreement is not a Priority Long Term Power Contract as the result of any action brought by any person other than the State of California or any agency thereof, including the CPUC.

Section 8: Acknowledgment of Assignee's Obligations and Rights. The Assignee has no obligation hereunder to extend credit to the Consenting Party at any time for any purpose solely as a result of execution and delivery of this Consent and Agreement. The Assignee shall have no obligation to the Consenting Party, and, except as otherwise set forth in this Consent and Agreement, the Consenting Party shall have no obligation to the Assignee, under the Assigned Agreement until such time as the Assignee notifies the Consenting Party in writing of the Assignee's election to assume, or cause a Permitted Transferee to assume, the Assignor's obligations under the Assigned Agreement as contemplated in Section 2 of this Consent and Agreement. If the Assignor defaults in the performance of any of its covenants to the Assignee in any of the [Bank Document], the Assignee shall have the right, inter alia, to (a)

declare all amounts due to the Assignee under the [Bank Document] immediately due and payable, (b) take possession of the Project and complete and operate the same, (c) sell or otherwise transfer its interest in the Project to a Permitted Transferee and any Permitted Transferee at such sale shall succeed to the Assignee's rights hereunder, provided that such Permitted Transferee shall cure any defaults by the Assignor under the Assigned Agreement, and assume, or cause an assignee or designee to assume, and continue to perform the Assignor's obligations under the Assigned Agreement, and (d) provided that it or any Permitted Transferee thereof agrees to be bound by the terms and conditions of the Assigned Agreement as contemplated in Section 2(b) of this Consent and Agreement, exercise all rights of the Assignor under the Assigned Agreement in accordance with the terms thereof. Without limiting the generality of the foregoing, if an event of default occurs and is continuing under any of the [Bank Document], the Assignee or any of its Permitted Transferees shall (provided that it or any Permitted Transferees agrees to be bound by the terms and conditions of the Assignment Agreement as contemplated in Section 2(b) of this Consent and Agreement), upon notice thereof to the Consenting Party, have the full right and power to enforce directly against the Consenting Party all obligations of the Consenting Party under the Assigned Agreement and otherwise to exercise all remedies of the Assignor thereunder, and to make all demands and give all notices and make all requests required or permitted to be made by the Assignor under the Assigned Agreement and the Consenting Party shall have no liability to the Assignor for acting in response to demands and requests of the Assignee. The Assignee or any of its Permitted Transferee shall have the right, but not the obligation, to perform any act, duty or obligation required of the Assignor under the Assigned Agreement at any time prior to any assumption pursuant to Section 2(b) of this Consent and Agreement, but nothing herein shall require the Assignee or any of its Permitted Transferee to cure any default, action or omission of the Assignor under the Assigned Agreement or to perform any act, duty or obligation of the Assignor under the Assigned Agreement prior to any such assumption pursuant to Section 2(b) of this Consent and Agreement.

Section 9: Legal Opinion. Upon the request of the Assignee, the Consenting Party shall deliver a legal opinion relating to the Assigned Agreement and this Consent and Agreement, which opinion shall be substantially in form attached hereto as Exhibit 1. The Consenting Party shall only be required to provide one opinion during the term of this Agreement.

Section 10: Binding Upon Successors. All agreements, covenants, conditions and provisions of this Consent and Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of each of the parties hereto.

Section 11: Captions. The captions or headings at the beginning of each Section of this Consent and Agreement are for convenience only and are not a part of this Consent and Agreement.

Section 12: Governing Law. This Consent and Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law.

Section 13: Amendment. This Consent and Agreement may be modified, amended or rescinded only by writing expressly referring to this Consent and Agreement and signed by all the parties hereto.

Section 14: Assignment of Claims. If the Assignee makes any payment to the Consenting Party pursuant to this Consent and Agreement or the Assigned Agreement originally required to be made by the Assignor, the Consenting Party shall, within ten (10) days after receipt of written request therefor, execute and deliver to the Assignee an assignment of the Consenting Party's claims against the Assignor for such payment in form and substance reasonably satisfactory to the Consenting Party and the Assignee.

Section 15: Severability. Every provision of this Consent and Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the other terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and to the extent possible all of such other provisions shall remain in full force and effect.

Section 16: Counterparts. This Consent and Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[SIGNATURES TO FOLLOW]



IN WITNESS WHEREOF, each of the Consenting Party, Assignee and Assignor has duly executed this Consent and Agreement as of the date first above written.

CALIFORNIA DEPARTMENT OF WATER RESOURCES  
acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code, and not under its powers and responsibilities with respect to the California State Water Resources Development System

By:  
Name:  
Title:

SUNRISE POWER COMPANY, LLC

By: \_\_\_\_\_  
Name:  
Title:

Accepted and Agreed:  
\_\_\_\_\_, as Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[Form of Chief Counsel Opinion]

[date]

[Addressee]

Ladies and Gentlemen:

Re: Master Power Purchase and Sale Agreement between Sunrise Power Company, LLC and the California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

I have examined the Master Power Purchase and Sale Agreement, dated June 25, 2001 (Version 2.1; modified April 25, 2000) between Sunrise Power Company, LLC (the “Company”) and the California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ( “CDWR-CERS”) dated [date], together with the cover sheet thereto and the related Confirmation Agreement, dated June 25, 2001 (collectively, the “PPA”), the Consent and Agreement (the “Consent Agreement”) dated as of [date] among CDWR-CERS , [insert name of agent], as agent on behalf of the lenders party to the Financing Documents and the Company (the PPA and Consent Agreement are hereinafter referred to collectively as the “Agreements”) and such other documents and information as I have deemed necessary to render this opinion. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Consent Agreement.

In my opinion:

1. CDWR-CERS has the requisite power and authority to execute and deliver the Agreements and to perform its obligations under the Agreements.

2. The Agreements have been duly authorized, executed, and delivered by CDWR-CERS and each constitutes the legal, valid and binding obligation of CDWR-CERS, enforceable in accordance with its terms except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally or by general principles of equity, including the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in proceeding in equity or at law, or by principles of public policy.

3. The execution and delivery of the Agreements by CDWR-CERS and the performance of the transactions contemplated therein by CDWR-CERS do not and will not (a) result in the violation by CDWR-CERS of any provision of the California Constitution or any law, statute, rule or regulation, (b) result in a default by CDWR-CERS under, or any breach by CDWR-CERS of, any indenture, mortgage, deed of trust, loan agreement or other evidence of indebtedness, or any agreement or instrument to which CDWR-CERS is a party or by which CDWR-CERS or its assets or properties are bound, or (c) result in the violation by CDWR-CERS of any judgment, order, writ, injunction or decree of any court or governmental agency or body binding upon CDWR-CERS or any of its assets or properties.

4. No consent, waiver, approval, authorization or order of, or registration, filing or qualification with or declaration to ("Approvals"), any governmental agency or body is required of CDWR-CERS in connection with the execution and delivery or the performance of the Agreements or the transactions contemplated therein, other than those Approvals already obtained or made by CDWR-CERS and such obtained Approvals are in full force and effect.

5. To the best of my knowledge, there is no litigation, action, suit, investigation or proceeding pending or threatened against or affecting the CDWR-CERS before or by any court, administrative or regulatory agency, governmental authority, body or agency, or arbitrator which (i) could reasonably be expected to have a material adverse effect on the ability of the CDWR-CERS to perform its obligations under the Agreements, or (ii) questions the validity, binding effect or enforceability of the Agreements, any action taken or to be taken pursuant thereto or any of the transactions contemplated thereby.

No opinion is expressed with respect to any agreement entered into by CDWR-CERS pursuant to Section 7 of the Consent Agreement after December 31, 2002.

Very truly yours,

Peggy Bernardy

Chief Counsel  
California Department of Water Resources

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**SCHEDULES AND EXHIBITS:**

Schedule A:	Permit Limits
Schedule B:	Estimated Capital Costs
Exhibit A:	Form of Dispatch Notice
Exhibit B:	Metering Services Agreement
Exhibit C:	Form of Consent and Agreement